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January 13, 2011

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Governing Board action is required for routine requests for permits which conform to applicable rules for utilization of Works and Lands of the District. Items are placed on this Consent Agenda when the staff's recommendation is for approval.	- 2
II RIGHT OF WAY OCCUPANCY PERMIT REQUESTS WITH WAIVER OF DISTRICT CRITERIA:	
Governing Board action is required on petitions received requesting a waiver of District criteria. Section 120.542, F.S. and Rule 28-104.002, F.A.C., requires agencies to grant variances and waivers to their own rules when a person subject to the rules files a petition and demonstrates that he or she can achieve, or has achieved, the purpose of the underlying statute by other means and when application of rule would create a substantial hardship or would violate principles of fairness. A "substantial hardship" is defined as a demonstrated economic, technological, legal or other type of hardship to the person requesting the waiver. "Principles of fairness" are violated when the literal application of a rule affects a particular person in a manner significantly different from the way it affects other similarly situated persons who are subject to the rule. A "waiver" is defined as an agency decision not to apply all or part of a rule to the person subject to the rule.	- 3 - 5

RIGHT OF WAY OCCUPANCY NEW PERMITS

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|---|---|
| 1. ROBERT OLIVER
COUNTY:HENDRY | Permit Number 13770
Appl. Number 10-1020-1
Fee |
| AUTHORIZING:
BOAT RAMP WITH RIP-RAP WITHIN THE EAST RIGHT OF WAY OF C-43 AT THE REAR OF 5500
FORT DENAUD ROAD.

LAST DATE FOR BOARD ACTION: 02/10/2011 | |
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| 2. DAVE AND DENISE LEMAY
COUNTY:ST. LUCIE | Permit Number 13761
Appl. Number 10-1103-1
Easement |
| AUTHORIZING:
EXISTING AND PROPOSED LANDSCAPING CONSISTING OF MULTIPLE TREES ENCROACHING 20' (60'
FROM THE TOP OF BANK) WITHIN THE NORTH RIGHT OF WAY OF C-24 AT THE REAR OF 1338 S.W. SULTAN
DRIVE (LOT 23, BLOCK 1312, PORT ST. LUCIE SECTION 12).

LAST DATE FOR BOARD ACTION: 02/10/2011 | |
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| 3. RYAN M. EVANS AND ANGELA J. GILES
COUNTY:ST. LUCIE | Permit Number 13697
Appl. Number 10-0601-2
Easement |
| AUTHORIZING:
EXISTING DOCK AND STAIRS AND PROPOSED RIP-RAP WITHIN THE SOUTH RIGHT OF WAY OF C-24 AT
THE REAR OF 1641 SOUTHWEST ABINGDON AVENUE (LOT 22, BLOCK 1670, PORT ST. LUCIE SECTION 31).

LAST DATE FOR BOARD ACTION: 01/13/2011 | |
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| 4. JOSEPH CLEMENTI
COUNTY:ST. LUCIE | Permit Number 13764
Appl. Number 10-1129-1
Fee and Easement |
| AUTHORIZING:
EXISTING DOCK WITH RIP-RAP WITHIN THE SOUTH RIGHT OF WAY OF C-24 AT THE REAR OF 2277 S.W.
SALMON ROAD (LOT 36, BLOCK 1758, PORT ST. LUCIE SECTION 35).

LAST DATE FOR BOARD ACTION: 02/10/2011 | |
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RIGHT OF WAY OCCUPANCY PERMIT REQUESTS WITH WAIVER OF CRITERIA

1. Consideration of a request by **Charles and Maria Torres** (Application No. 10-0812-3, Permit Number 13765) for Waiver of the District's criteria and issuance of a Right of Way Occupancy Permit to allow existing landscaping encroaching 36' from the top of bank within the north right of way of the C-2 at the rear of 9370 S.W. 83rd Street, Miami, FL to remain. Location: Miami-Dade County, Section 33, Township 54 South, Range 40 East.

The applicant's request for Waiver of the District's criteria which governs the placement of permanent and/or semi-permanent above-ground encroachments within 40 feet of the top of the canal bank within Works and Lands of the District is based on "principles of fairness". The applicant states that many of his neighbors have trees located within 40 feet of the top of the canal bank. He also indicates that his plants run along his property line and the plantings will not impact the District's ability to access or maintain its easement. The District's Operations Resource Management staff has determined that the existing above-ground encroachments do not significantly interfere with the District's access and ability to perform necessary construction, alteration, operation and maintenance activities, so the purpose of the underlying statute will be achieved.

The applicant's petition has been reviewed by the Office of Counsel for compliance with the applicable legal requirements. Pursuant to section 120.542(6), F.S. notice of the petition was provided to the Department of State and was published in *Volume 36, Number 47* of the *Florida Administrative Weekly* on *November 24, 2010*. No public comments were received.

Therefore, staff recommends **approval** of the issuance of Right of Way Occupancy Permit Number 13765 and **approval** of the petition for Waiver of the District's criteria which governs the placement of permanent and/or semi-permanent above-ground encroachments within 40 feet of the top of the canal bank within Works or Lands of the District.

(Fee)

RIGHT OF WAY OCCUPANCY PERMIT REQUESTS WITH WAIVER OF CRITERIA

2. Consideration of a request by **Palm Beach County** (Application Number 10-0128-1, Permit (MOD) Number 8388) for issuance of a Modification to Right of Way Occupancy Permit Number 8388 for the widening of SR 7/US 441 bridge crossing C-51 and waiver of the District's criteria to allow the proposed relocation of an existing high mast street light, traffic signalization pole and associated pull boxes to be located within the southeast and northeast bridge quadrants at the intersection of SR7/US 441 and SR80 within the east right of way of C-51. Location: Palm Beach County, Section 36, Township 43 South, Range 41 East.

The applicant's request for Waiver of the District's criteria which governs the placement of permanent and/or semi-permanent above-ground facilities within 40 feet of the top of the canal bank and within the District's designated 100 foot long equipment staging areas located at all bridge and pile-supported utility crossings within Works and Lands of the District is based on a "substantial hardship". The applicant asserts that the lack of available FDOT right of way necessitate the placement of the facilities within the District's right of way and without authorization to place the proposed light and signalization poles and associated pull boxes at the designated location would create traffic safety concerns for the public. The District's Operations Resource Management staff has determined that the proposed facilities will not significantly interfere with the District's access and ability to perform necessary construction, alteration, operation and maintenance activities, as the District has no useable right of way along the north bank of C-51 at the intersection of SR 7/US 441 and SR 80 and a limited amount of overbank within the southerly right of way, so the underlying statute will be achieved.

The applicant's petition has been reviewed by the Office of Counsel for compliance with the applicable legal requirements. Pursuant to Section 120.542(6), F.S. notice of the petition was provided to the Department of State and was published in *Volume 36, Number 34* of the *Florida Administrative Weekly* on August 27, 2010. No public comments were received.

Therefore, staff recommends **approval** of the issuance of a Modification to Right of Way Occupancy Number 8388 and **approval** of the petition for Waiver of the District's criteria which governs the placement of permanent and/or semi-permanent above-ground facilities within 40 feet top of the canal bank and within the District's designated 100 foot long equipment staging areas located at all bridge and pile-supported utility crossings within Works and Lands of the District.

(Fee)

RIGHT OF WAY OCCUPANCY PERMIT REQUESTS WITH WAIVER OF CRITERIA

3. Consideration of a request by **Granada Estates Homeowners Association**, (Application Number 10-1104-1, Permit Number 13769), for issuance of a Right of Way Occupancy Permit and waiver of criteria to authorize a proposed cross-fence with a 36" wide pedestrian pass-thru and a 16' double-wide vehicular access gate with District locks crossing the north right of way of C-103S adjacent to the Granada Estates Development. Location: Miami-Dade County, Section 17, Township 57 South, Range 39 East.

The applicant's request for waiver of the District's criteria, which governs the placement of permanent and semi-permanent above-ground facilities within 40' of the top of the canal bank within Works or Lands of the District is based on substantial hardship. The applicant asserts that the cross-fence is needed to prevent trespassing into their community's backyards. This cross-fence will be an extension of the fence that will be installed between 2 communities (Granada West and Portofino West II), in order to reduce the amount of trespassing leading to robberies and break-ins taking place in our communities.

The Operations Maintenance Resources Department has stated that the proposed facilities will not interfere with their ability to perform necessary construction, alteration, operation and routine maintenance activities, so the purpose of the underlying statute will be achieved.

The applicant's petition has been reviewed by the Office of Counsel for compliance with the applicable legal requirements. Pursuant to section 120.542(6), F.S., notice of the petition was provided to the Department of State and was published in *Volume 36, Number 47* of the *Florida Administrative Weekly* on November 24, 2010. No public comments were received.

Therefore, staff recommends **approval** of the issuance of Right of Way Occupancy Permit Number 13769 and **approval** of the petition for waiver of the District's criteria which governs the placement of permanent and semi-permanent above-ground structures within 40' of the top of the canal bank within Works or Lands of the District.

(Fee)